1   BOIES, SCHILLER & FLEXNER LLP
    RICHARD J. POCKER (NV Bar No. 3568)
2   300 South Fourth Street, Suite 800
    Las Vegas, NV 89101
3   Telephone: (702) 382-7300
    Facsimile: (702) 382-2755
4   rpocker@bsfllp.com

5   BOIES, SCHILLER & FLEXNER LLP
    STEVEN C. HOLTZMAN (*pro hac vice*)
6   FRED NORTON (*pro hac vice*)
    KIERAN P. RINGGENBERG (*pro hac vice*)
7   1999 Harrison Street, Suite 900
    Oakland, CA 94612
8   Telephone: (510) 874-1000
    Facsimile: (510) 874-1460
9   sholtzman@bsfllp.com
    fnorton@bsfllp.com
10 kringgenberg@bsfllp.com

BINGHAM McCUTCHEN LLP
GEOFFREY M. HOWARD (*pro hac vice*)
THOMAS S. HIXSON (*pro hac vice*)
KRISTEN A. PALUMBO (*pro hac vice*)
BREE HANN (*pro hac vice*)
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: 415.393.2000
Facsimile: 415.393.2286
geoff.howard@bingham.com
thomas.hixson@bingham.com
kristen.palumbo@bingham.com
bree.hann@bingham.com

DORIAN DALEY (*pro hac vice*)
DEBORAH K. MILLER (*pro hac vice*)
JAMES C. MAROULIS (*pro hac vice*)
ORACLE CORPORATION
500 Oracle Parkway, M/S 5op7
Redwood City, CA 94070
Telephone: 650.506.4846
Facsimile: 650.506.7114
dorian.daley@oracle.com
deborah.miller@oracle.com
jim.maroulis@oracle.com

13 Attorneys for Plaintiffs Oracle USA, Inc.,
    Oracle America, Inc. and Oracle International
14 Corp.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

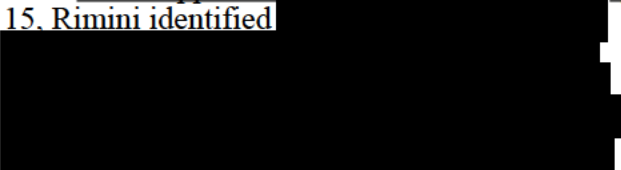|	

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation,
 	
            Plaintiffs,
 	
      v.
 	
RIMINI STREET, INC., a Nevada corporation; SETH RAVIN, an individual,
 	
            Defendants.
	Case No 2:10-cv-0106-LRH-PAL
	
	STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT (L.R. 56-1)
	
	Judge: Hon. Larry R. Hicks

A/75172406 1

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1   Pursuant to Civil Local Rule 56-1, Plaintiffs Oracle USA, Inc., Oracle America,

2   Inc., and Oracle International Corp. (collectively, "Oracle"), submit this statement setting forth

3   each undisputed fact in support of their second motion for partial summary judgment, with

4   citations to the evidence in support of each fact. Unless otherwise indicated, all citations to

5   Exhibits ("Exs.") are to the exhibits attached to the Appendix of Exhibits Cited In Support of

6   Oracle's Second Motion for Partial Summary Judgment filed on September 14, 2012. All

7   citations to "Pradhan Decl." are to the Declaration of Manu Pradhan In Support Of Oracle's

8   Second Motion for Partial Summary Judgment, filed on September 14, 2012.

9   **I.   FACTS RELATED TO RIMINI'S COPYING AND USE OF ORACLE DATABASE**

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11   **A.   Oracle Owns and Licenses Oracle Database**

#	Undisputed Fact	Supporting Evidence
1	Oracle International Corporation owns or is the exclusive licensee of all copyrights-in-suit, including the copyrights for the six versions of Oracle's Relational Database Management Software ("Oracle Database") at issue in Oracle's second motion for partial summary judgment.	• **Dkt. No. 400 (Amended Stipulation Re Copyright Registrations And Copies) at ¶ 8 & Exhibit A thereto:** "8. For the purposes of this action, Defendants will not dispute that Plaintiff Oracle International Corporation became the owner or exclusive licensee of the 100 registered works listed in Exhibit A." Exhibit A refers to the following works (indicated by registration number and title): • TX 5-222-106: Oracle 8i Enterprise Edition, release 2 (8.1.6) (row 95). • TX 5-673-282: Oracle 9i Database Enterprise: Edition Release 2 (row 96). • TX 6-938-648: Oracle Database 10g: Release 1 (row 97). • TX 6-942-003: Oracle Database 10g: Release 2 (row 98). • TX 7-324-157: Oracle Database 11g: Release 1 (row 99). • TX 7-324-158: Oracle Database 11g: Release 2 (row 100).

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
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1	2	The copyrights for the six versions of Oracle Database at issue in Oracle's second motion for partial summary judgment are all valid.	• **Dkt. No. 400 (Amended Stipulation Re Copyright Registrations And Copies) at ¶¶ 7-8 & Exhibit A thereto:** "7. For the purposes of this action, Defendants will not dispute that the copyright registrations for each of the 100 registered works listed in Exhibit A are valid." Exhibit A refers to the following works (indicated by registration number and title): • TX 5-222-106: Oracle 8i Enterprise Edition, release 2 (8.1.6) (row 95). • TX 5-673-282: Oracle 9i Database Enterprise: Edition Release 2 (row 96). • TX 6-938-648: Oracle Database 10g: Release 1 (row 97). • TX 6-942-003: Oracle Database 10g: Release 2 (row 98). • TX 7-324-157: Oracle Database 11g: Release 1 (row 99). • TX 7-324-158: Oracle Database 11g: Release 2 (row 100).
16	3	The Oracle License and Service Agreement ("OLSA") permits paying customers to use Oracle Database subject to certain limitations, such as that ███████████████████████ ████████████████."	• **Pradhan Decl. ¶ 4 & Ex. 2 (ORCLRS01313250) ("OLSA") at 1:** C. Rights Granted ████████████████████████ ████████████████████████ ████████████████████████ ████████████████████████ ████████████████████████ ████████████████████████ • **Dkt. No. 236 (Stipulation and Order Concerning Claims Related to Rimini's Use of Oracle Database):** The Parties agreed on March 22, 2012 that "the terms of the [27] Oracle standard form Database licenses" listed in Dkt. No. 236 "are representative of the licenses Oracle entered into with its customers for use of Oracle database. The Parties further agree[d] that, to the extent

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18			either Party wishes to invoke the terms of an Oracle Database license, for any purpose in the litigation or at trial, the Parties will substitute the terms of Oracle's standard form Database licenses (which Oracle has produced), for the actual Database license agreements entered into between Oracle and its customers . . . ." The version of the OLSA cited throughout this Statement of Undisputed Facts and Oracle's second summary judgment motion as Ex. 2 (ORCLRS01313250) is one of the "Oracle standard form Database licenses" listed in Dkt. No. 236. The terms relevant to the motion do not vary materially from the other standard form Database licenses listed in Dkt. No. 236. • **Pradhan Decl. ¶ 3 & Ex. 1 (Rimini's Response to Interrogatory 15) at 4, 10:** Oracle's Interrogatory 15 asked Rimini to identify "each specific license agreement . . . held by Rimini Street and/or Rimini Street's licensed customers for whom Rimini Street acts as an agent that you allege authorized YOUR use of ORACLE's copyrighted SOFTWARE AND SUPPORT MATERIALS" (internal quotations omitted). In its First Supplemental Answer to Interrogatory 15, Rimini identified ████████ ████████████████████████████ ████████████████████████████ ████████████████████████████
19 20 21 22 23 24 25 26 27 28	4	The Developer License allows application developers to use Oracle Database for free "only for the purpose of developing, testing, prototyping and demonstrating your application, and not for any other purpose," and it provides that the developer may not use Oracle Database "for any commercial or production purpose."	• **Pradhan Decl. ¶ 3 & Ex. 1 (Rimini's Response to Interrogatory 15) at 4, 10:** Oracle's Interrogatory 15 asked Rimini to identify "each specific license agreement . . . held by Rimini Street and/or Rimini Street's licensed customers for whom Rimini Street acts as an agent that you allege authorized YOUR use of ORACLE's copyrighted SOFTWARE AND SUPPORT MATERIALS" (internal quotations omitted). ████████████████████████████ ████████████████████████████ ████████████████████████████

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
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1		• **Pradhan Decl. ¶ 6 & Ex. 4 (ORCLRS0353011) ("1/24/08 Developer License");** *id*. **¶ 7 & Ex. 5 (Oracle Depo. Ex. 808) ("1/24/09 Developer License"):**

The Developer License grants a "nonexclusive, nontransferable limited license to use the programs *only for the purpose of developing, testing, prototyping and demonstrating your application, and not for any other purpose*. If you use the application you develop under this license . . . for any commercial or production purposes, . . . you must obtain a production release version of the program by contacting us or an Oracle reseller to obtain the appropriate license."

[. . .]

"You may not: - use the program for your own internal data processing *or for any commercial or production purposes* . . . ." (emphasis supplied).

The Developer License further provides: "Ownership and restrictions[.] We retain all ownership and intellectual property rights in the programs. The programs may be installed on one computer only, and used by one person in the operating environment identified by us."

• **Pradhan Decl. ¶ 5 & Ex. 3 (RSI06698450) ("3/09/05 Developer License"):**

The Developer License grants a "nonexclusive, nontransferable limited license to use the programs *only for the purpose of developing a single prototype of your application, and not for any other purpose.* If you use the application you develop under this license . . . for any commercial or production purposes, . . . you must contact us, or an Oracle reseller, to obtain the appropriate license."

[. . .]

"You may not: - use the programs for your own internal data processing *or for any commercial or production purposes* . . . ." (emphasis supplied).

• **Pradhan Decl. ¶ 8 & Ex. 6 (Richard Allison Depo.) at 206:13-20, 209:23-210:17:**

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	5	"You" and "your" is defined in the Developer License to mean the individual or entity that wishes to use the programs from Oracle.	• **Pradhan Decl. ¶ 5 & Ex. 3 (3/09/05 Developer License); *id.* ¶ 6 & Ex. 4 (1/24/08 Developer License); *id.* ¶ 7 & Ex. 5 (1/24/08 Developer License):** "'You' and 'your' refers to the individual or entity that wishes to use the programs from Oracle."
	6	The Developer License provides that the user may not "continue to develop your application" on Oracle Database "after you have used it for any . . . commercial purpose . . . without securing an appropriate license from us, or an Oracle reseller."	• **Pradhan Decl. ¶ 5 & Ex. 3 (3/09/05 Developer License); *id.* ¶ 6 & Ex. 4 (1/24/08 Developer License); *id.* ¶ 7 & Ex. 5 (1/24/08 Developer License):** "You may not: [. . .] - continue to develop your application after you have used it for any internal data processing, commercial or production purpose without securing an appropriate license from us, or an Oracle reseller."
	7	The Developer License and the OLSA state that they are "governed by the substantive and procedural laws of	• **Pradhan Decl. ¶ 5 & Ex. 3 (3/09/05 Developer License); *id.* ¶ 6 & Ex. 4 (1/24/08 Developer License); *id.* ¶ 7 & Ex. 5 (1/24/08**

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California."		**Developer License):**
		The three versions of the Developer License discussed in Oracle's second motion for partial summary judgment uniformly state: "This agreement is governed by the substantive and procedural laws of California."
		• **Pradhan Decl. ¶ 4 & Ex. 2 (OLSA) at 4:**
		██████████████████████████ ██████████████ .

B.   Rimini's Acquisition Of Oracle Database Copies And License Contentions

#	Undisputed Fact	Supporting Evidence
8	████████████████████████ ███████ .	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 17:20-25, 109:19-110:5:** ████████████████████████ █████████████████ ████████████████████ ███████████ [. . .] ████████████████████████████ ████████████████████████████ ████████████████████████████ ████████████████████████████ ████████████████████████████ ████████████████████████████ • **Pradhan Decl. ¶ 11 & Ex. 9 (Krista Williams Depo.) at 9:7-13, 11:2-4:** ████████████████████████ ███████████████████

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
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7   • **Pradhan Decl. ¶ 13 & Ex. 11 (Doug Baron Depo.) at 247:2-6:**

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12   • **Pradhan Decl. ¶ 14 & Ex. 12 (Beth Lester 30(b)(6) Depo.) at 30:21-31:18:**

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27   • **Pradhan Decl. ¶ 17 & Ex. 15 (John Whittenbarger Depo.) at 57:1-9, 59:2-12:**

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
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12		• **Pradhan Decl. ¶ 18 & Ex. 16 (Seth Ravin Depo.) at 448:6-24:**
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10	Rimini admits to ███████ ███████████ ."	• **Pradhan Decl. ¶ 20 & Ex. 18 (Rimini's First Supp. Response to Interrogatory 18) at 5, 7; *id.* ¶ 22 & Ex. 20 (Attachment B to Rimini's First Supp. Response to Interrogatory 18):**
		Oracle's Interrogatory 18 asks Rimini to "*Identify all Installation Media for Oracle*

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
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Database Software currently or formerly present on Identified Rimini Computer System(s) or Identified Rimini Virtual Machine(s) or otherwise within Rimini's possession, custody or control, including for each instance: . . . *e. [the] source from which the Installation Media were obtained* . . . ." (emphasis supplied)

Rimini's First Supplemental Response to Interrogatory 18 states that "responsive information is set forth in Attachment B . . . ."

- **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 84:1-85:1:**

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| | 11 | The copies ███████████ ███████████ cover five of the six copyrights for Oracle Database at issue in Oracle's second motion for partial summary judgment. | • **Pradhan Decl. ¶ 20 & Ex. 18 (Rimini's First Supp. Response to Interrogatory 18) at 5, 7;** *id.* **¶ 22 & Ex. 20 (Attachment B to Rimini's First Supp. Response to Interrogatory 18):**

Oracle's Interrogatory 18 asks Rimini to "***Identify all Installation Media for Oracle Database Software*** currently or formerly present on Identified Rimini Computer System(s) or Identified Rimini Virtual Machine(s) or otherwise within Rimini's possession, custody or control, including for each instance: . . . *a. type and version of database created (for instance, 'Oracle RDBMS, version 10.1.0.1.0")*; . . . ." (emphasis supplied)

Rimini's First Supplemental Response to Interrogatory 18 states that "responsive information is set forth in Attachment B . . . ."

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• ***See*** **Undisputed Fact 1 & Declaration of Mark Fallon In Support Of Oracle's Motion For Partial Summary Judgment ("Fallon Decl.") ¶¶ 4-8:**

    • Oracle owns or has an exclusive license for the copyright for Oracle Database Enterprise Edition, Release 2 (8.1.6). *See* Undisputed Fact 1. "[A]lmost all of the |

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| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | | | code from Oracle Database 8.1.6 is present in Oracle Database versions 8.1.7.0.0 through 8.1.7.4.1." Fallon Decl., ¶ 8.

• Oracle owns or has an exclusive license for the copyright for Oracle Database 9i Database Enterprise: Edition Release 2 (9.2). *See* Undisputed Fact 1. "Oracle Database 9.2.0.1.0 was . . . the first production release of 9.2." Fallon Decl., ¶ 5. "[A]lmost all the code from Oracle Database 9.2.0.1.0 is present in 9.2.0.2.0 through 9.2.0.8.0." *Id.*, ¶ 8.

• Oracle owns or has an exclusive license for the copyright for Oracle Database 10g Release 2. *See* Undisputed Fact 1. "Oracle Database 10g Release 2 was first made available . . . as version 10.2.0.1.0." Fallon Decl., ¶ 6, "[A]lmost all the code from 10.2.0.1.0 is present in versions 10.2.0.2.0 through 10.2.0.4.0." *Id.*, ¶ 8.

• Oracle owns or has an exclusive license for the copyright for Oracle Database 11g Release 1. *See* Undisputed Fact 1. "Oracle first released Oracle Database 11g Release 1 . . . as version 11.1.0.6.0." Fallon Decl., ¶ 7. "[A]lmost all the code from 11.1.0.6.0 is present in version 11.1.0.7.0." *Id.*, ¶ 8.

• Oracle owns or has an exclusive license for the copyright for Oracle Database 11g Release 2. *See* Undisputed Fact 1. "Oracle first released Oracle Database 11g Release 2 for production . . . as version 11.2.0.1.0." Fallon Decl., ¶ 7. "[A]lmost all the code from 11.2.0.1.0 is present in versions 11.2.0.2.0 and 11.2.0.3.0." *Id.*, ¶ 8. |
| 23 24 25 26 27 28 | 12 | Creating a complete copy of installation media also creates a copy of any protected expression present on that installation media. | • **Pradhan Decl. ¶ 25 & Ex. 23 (Rimini's Responses to Oracle's Requests for Admission, Nos. 13-14):**

Request No. 13:
"Admit that creating a complete copy of Installation Media creates at least one copy of any and all Code Objects present on that Installation Media."

Response:
Subject to its objections, "Rimini Street |

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1			responds: Admitted."
2			Request No. 14
3			"Admit that copying Installation Media located on one computer, network location, virtual machine, storage device or physical media onto a
4			second computer, network location, virtual machine, storage device or physical media
5			creates at least one complete copy of that Installation Media."
6			
7			Response: ". . . Rimini Street admits that completely copying Installation Media from one physical
8			location or device to a second physical location or device creates at least one complete copy of
9			that Installation Media."
10	13	████████████████	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 79:16-80:8, 81:23-82:10, 84:1-85:13, 88:19-89:17:**
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
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10		• **Pradhan Decl. ¶ 26 & Ex. 24 (David Klausner Depo.) at 229:25-230:4, 232:10-24:**
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24		• **Pradhan Decl. ¶ 20 & Ex. 18 (Rimini's First Supp. Response to Interrogatory 18) at 5, 7;** *id.* **¶ 22 & Ex. 20 (Attachment B to Rimini's First Supp. Response to Interrogatory 18):**
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27		Oracle's Interrogatory 18 asks Rimini to "***Identify all Installation Media for Oracle***
28		***Database Software*** currently or formerly present

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1			on Identified Rimini Computer System(s) or Identified Rimini Virtual Machine(s) or
2			otherwise within Rimini's possession, custody or control, including for each instance: . . . *e. [the]*
3			*source from which the Installation Media were obtained*; . . . ." (emphasis supplied)
4			
5			Rimini's First Supplemental Response to Interrogatory 18 states that "responsive information is set forth in Attachment B . . . ."
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7			███████████████████████████
8			█████████████████
9			• **Pradhan Decl. ¶ 24 & Ex. 22 (Oracle's First Set of Requests for Admission) at 1:**
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11			For purposes of Request Nos. 13-14, the term "Installation Media" is defined to mean "any CD,
12			DVD, download, electronic file, or similar item that can be or has been used to install Oracle Enterprise Software or Oracle Database
13			Software."
14			• **Pradhan Decl. ¶ 25 & Ex. 23 (Rimini's Responses to Oracle's Requests for**
15			**Admission, Nos. 13-14):**
16			Request No. 13 asked Rimini to "[a]dmit that creating a complete copy of Installation Media
17			creates at least one copy of any and all Code Objects present on that Installation Media."
18			
19			Response: Subject to its objections, "Rimini Street responds: Admitted."
20			Request No. 14 asked Rimini to "[a]dmit that copying Installation Media located on one
21			computer, network location, virtual machine, storage device or physical media onto a second
22			computer, network location, virtual machine, storage device or physical media creates at least
23			one complete copy of that Installation Media."
24			Response: Subject to its objections, "Rimini Street admits that completely copying
25			Installation Media from one physical location or device to a second physical location or device
26			creates at least one complete copy of that Installation Media."
27			
28	14	In discovery, when asked to identify what license authorized its copies of	• **Pradhan Decl. ¶ 3 & Ex. 1 (Rimini's Response to Interrogatory 15) at 4, 10:**

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
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1–9		Oracle Database, ████	████
10–27	15	As Rimini Vice President George Lester testified, ████.	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 7:23-24, 84:1-85:1:** "Q. What is your job title now? A. Vice president of IT. [. . .] ████
28	16	████	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 82:19-83:10:**

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11			• **Pradhan Decl. ¶ 27 & Ex. 25 (RSI02519754):**
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13			In a January 20, 2010 internal email, Rimini employee Dennis Chiu wrote:
14			████████████████████
15			████████████████████
16			████████████████.
17			• **Pradhan Decl. ¶ 28 & Ex. 26**
18			**(RSI03920019):**
19			In a February 23, 2010 internal email, Mr. Lester wrote: ██████████████
20			████████████████████
21			████████████████████
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23	17	At his deposition, Seth Ravin, Rimini's founder and CEO, recalled having discussed with Mr	• **Pradhan Decl. ¶ 18 & Ex. 16 (Seth Ravin Depo. (Nov. 17-18, 2011)) at 6:18-21, 13:4-6, 446:12-447:17:**
24		████████████████	
25			"Q. What is your current role at Rimini Street?
26			A. I am the chief executive officer and chairman of the board.
27			[. . .]
28			████████████

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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16	18	█████████████	• **Pradhan Decl. ¶ 13 & Ex. 11 (Doug Baron Depo.) at 10:16-21, 256:4-7:**
17		██████████████."	"Q. What has your role been at Rimini Street?
18			A. My initial role at Rimini Street was to set up the first few PeopleSoft environments for our first few customers. That was my very first role.
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21			[. . .]
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C.   Rimini Copied Oracle Database When Creating Environments

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#	Undisputed Fact	Supporting Evidence
19	Rimini admits ███████████ ████████████████ ████████████████ ████████████████	• **Pradhan Decl. ¶ 20 & Ex. 18 (Rimini's First Supp. Response to Interrogatory 17) at 2;** *id.* **¶¶ 21, 23 & Exs. 19, 21 (Attachment A & First Supp. Attachment C to Rimini's First Supp. Response to Interrogatory 17):** Oracle's Interrogatory 17 asked Rimini to "[i]dentify all Oracle Database Software currently or formerly present on Identified Rimini Computer System(s) or identified Rimini Virtual Machine(s) . . . ." Rimini's First Supplemental Answer to Interrogatory 17 states that "responsive information is set forth in Attachment A . . . . Rimini further responds that responsive information is set forth in Attachment C." ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ █ ██████████████ ██████████ █ ██████████████

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7			• *See* **Undisputed Fact 1 & Fallon Decl. ¶¶ 4-8:**
8			• Oracle owns or has an exclusive license for the copyright for Oracle Database
9			Enterprise Edition, Release 2 (8.1.6). *See* Undisputed Fact 1. "[A]lmost all of the
10			code from Oracle Database 8.1.6 is present in Oracle Database versions
11			8.1.7.0.0 through 8.1.7.4.1." Fallon Decl., ¶ 8.
12			
13			• Oracle owns or has an exclusive license for the copyright for Oracle Database 9i
14			Database Enterprise: Edition Release 2 (9.2). *See* Undisputed Fact 1. "Oracle Database 9.2.0.1.0 was . . . the first
15			production release of 9.2." Fallon Decl., ¶ 5. "[A]lmost all the code from Oracle
16			Database 9.2.0.1.0 is present in 9.2.0.2.0 through 9.2.0.8.0." *Id.*, ¶ 8.
17			
18			• Oracle owns or has an exclusive license for the copyright for Oracle Database 10g Release 1. *See* Undisputed Fact 1. "The
19			first production release for Oracle Database 10g Release 1 was version
20			10.1.0.2." Fallon Decl., ¶ 6. "[A]lmost all the code from Oracle Database
21			10.1.0.2 is present in versions 10.2.0.2.0 through 10.1.0.4.2." *Id.*, ¶ 8.
22			
23			• Oracle owns or has an exclusive license for the copyright for Oracle Database 10g Release 2. *See* Undisputed Fact 1.
24			"Oracle Database 10g Release 2 was first made available . . . as version 10.2.0.1.0."
25			Fallon Decl., ¶ 6. "[A]lmost all the code from 10.2.0.1.0 is present in versions
26			10.2.0.2.0 through 10.2.0.4.0." *Id.*, ¶ 8.
27			• Oracle owns or has an exclusive license for the copyright for Oracle Database 11g
28			Release 1. *See* Undisputed Fact 1.

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1			"Oracle first released Oracle Database 11g Release 1 . . . as version 11.1.0.6.0." Fallon Decl., ¶ 7. "[A]lmost all the code from 11.1.0.6.0 is present in version 11.1.0.7.0." Fallon Decl., ¶ 8.
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4			• Oracle owns or has an exclusive license for the copyright for Oracle Database 11g Release 2. *See* Undisputed Fact 1. "Oracle first released Oracle Database 11g Release 2 for production . . . as version 11.2.0.1.0." Fallon Decl., ¶ 7. "[A]lmost all the code from 11.2.0.1.0 is present in versions 11.2.0.2.0 and 11.2.0.3.0." Fallon Decl., ¶ 8.
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9			• **Pradhan Decl. ¶ 29 & Ex. 27 (Ray Grigsby Depo.) at 114:7-115:1; *id.* ¶ 30 & Ex. 28 (Oracle Depo. Ex. 183):**
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21	20	██████████████████████	• *See* **Undisputed Fact 19.**
22		██████████████████	Rimini admits to ███████████
23		█████.	
24			• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 79:16-22, 87:12-19, 88:19-89:17, 107:1-5:**
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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25   • **Pradhan Decl. ¶ 11 & Ex. 9 (Krista**
              Williams Depo.) at 61:1-62:5, 63:22-64:17;
26   *id.* **¶ 12 & Ex. 10 (Oracle Depo. Ex. 470):**
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

			• **Pradhan Decl. ¶ 31 & Ex. 29 (RSI06800276):** An internal Rimini IT service request dated April 29, 2010 states: ██████████ ████████████████████ ████████████████████ ████████████████████ • **Pradhan Decl. ¶ 25 & Ex. 23 (Rimini's Responses to Oracle's Requests for Admission, No. 14):** Request No. 14 asks Rimini to "[a]dmit that copying Installation Media located on one computer, network location, virtual machine, storage device or physical media onto a second computer, network location, virtual machine, storage device or physical media creates at least one complete copy of that Installation Media." Response: "Rimini Street admits that completely copying Installation Media from one physical location or device to a second physical location or device creates at least one complete copy of that Installation Media."
21	████████████████████ ████████████████████ ████████████████████ ████████████████████.	• *See* **Undisputed Facts 8, 19, 20.**
22	An installed copy of Oracle Database includes copies of substantial portions of the source code and related components of the underlying Oracle Database software.	• **Fallon Decl., ¶¶ 9-14.** "9. I have installed Oracle Database from a CD, DVD or downloaded executable file numerous times, and I have personal knowledge of the results of such installations. *When Oracle Database is installed from a CD, DVD or downloaded executable file, a copy of the entire Oracle Database software is installed*. An installation of Oracle Database includes nearly 100% of the code (as scripts or binary code), including database schema. 10. Someone who makes a copy of Oracle Database reproduces Oracle's database schema,

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

1	which includes system tables and views, fields and the relationships between tables. […] The structures of the tables and fields, and the relationships between tables, are the result of creative choices made by thousands of Oracle developers, subject to loose guidelines that have developed on the Oracle Database team over time. I regularly make these types of choices with respect to the development of Oracle Database.

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which includes system tables and views, fields
and the relationships between tables. […] The
structures of the tables and fields, and the
relationships between tables, are the result of
creative choices made by thousands of Oracle
developers, subject to loose guidelines that have
developed on the Oracle Database team over
time. I regularly make these types of choices
with respect to the development of Oracle
Database.

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11.   Someone who makes a copy of Oracle
Database also reproduces the programs,
functions, subroutines, and program variables
contained within Oracle Database (either as
compiled code or as source code). The names of,
relationships between and structures of these
programs, functions, subroutines, and program
variables are the result of creative choices made
by hundreds of Oracle developers, subject to
loose guidelines that have developed on the
Oracle Database team over time. […]

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12.   Because developers have so much
creative license in how to name and structure
their code, individual developers often have their
own style. In addition to structural choices like
those discussed above, developers have
tremendous leeway in their use of comments,
whitespace, and names, because these stylistic
choices generally do not affect the functioning of
the code. When I was developing code for
Oracle Database, I frequently inserted comments
in the source code.

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13.   Both the database schema and the source
code contain content, including both comments
and code, *that is reproduced both when Oracle
Database is installed and when an existing
installation of Oracle Database is reproduced.*

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14.   At a high level, Oracle Database
comprises millions of lines of code and a very
complex schema. The code and the schema are
the result of millions of small-scale choices like
those described above, as well as larger-scale
choices from high-level product architecture and

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

1			what features and functionality to offer to Oracle's users all the way down to how different code files interrelate." (emphasis supplied throughout)
3	23	████████████████████	• ***See* Undisputed Fact 8.**
4		████████████████████	
5		████████████████	An environment includes an installed database component.
6			• **Pradhan Decl. ¶ 32 & Ex. 30 (Oracle's Fifth Set of Interrogatories, Nos. 20-25) at 4-5:**
8			In response to Oracle Interrogatories 20-21, Rimini admits that ████████████████.
10			Interrogatory 20
			"*For each Environment listed on Exhibit A or contained within a virtual machine listed on Exhibit A, Identify the Environment and the Source(s) from which You obtained all Installation Media used to create or modify that Environment. For example, if an Environment was created by cloning (copying) a previously existing Environment,* which in turn was created from Installation Media stored on an Identified Rimini Computer System, which in turn were copied from physical Installation Media obtained directly from a specific client, the response should Identify the origins, names, locations at time of use, customer(s) from which or on whose behalf you claim to have obtained the materials (if applicable), and website(s) or media from which you obtained the materials (if applicable) for (1) the previous Environment, (2) the electronic copy of Installation Media, and (3) the physical Installation Media, and the role of each in serving as a source." (emphasis supplied)
23			Interrogatory 21
			"*For each Environment that ever existed on any Identified Rimini Computer System (excluding Environments listed on Exhibit A or contained within a virtual machine listed on Exhibit A), including but not limited to the Environments listed on Exhibit B or contained within a virtual machine listed on Exhibit B, Identify the Environment and the Source(s)*

26

1		*from which You obtained all Installation Media used to create or modify that Environment. For example, if an Environment was created by cloning (copying) a previously existing Environment,* which in turn was created from Installation Media stored on an Identified Rimini Computer System, which in turn were copied from physical Installation Media obtained directly from a specific client, the response should Identify the origins, names, locations at time of use, customer(s) from which or on whose behalf you claim to have obtained the materials (if applicable), and website(s) or media from which you obtained the materials (if applicable) for (1) the previous Environment, (2) the electronic copy of Installation Media, and (3) the physical Installation Media, and the role of each in serving as a source." (emphasis supplied)

- **Pradhan Decl. ¶ 33 & Ex. 31 (Rimini's Third Supplemental Responses to Interrogatories 20-22) at 13-18, 29-35:**

Rimini's Third Supplemental Responses to Interrogatory 20 (pp. 13-18) and Interrogatory 21 (pp. 29-35) are identical.

In those responses (pp. 13-14, 30), ██

- **Pradhan Decl. ¶ 34 & Ex. 32 (First Supp. Exhibit 1A-3 to Rimini's Third Supp. Responses to Interrogatories 20-22):**

In First Supplemented Exhibit 1A-3, Rimini identifies ██

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- **Pradhan Decl. ¶ 11 & Ex. 9 (Krista Williams Depo.) at 52:25-53:17:**

- **Pradhan Decl. ¶ 20 & Ex. 18 (Rimini's First Supp. Response to Interrogatory 17);** *id.* **¶¶ 21, 23 & Exs. 19, 21 (Attachment A & First Supp. Attachment C to Rimini's First Supp. Response to Interrogatory 17):**

- **Dkt. No. 263 (Rimini's Statement of Facts in Support of Rimini's Opposition to Oracle's [First] Motion For Partial Summary Judgment and Response to Oracle's Alleged Facts) at No. 35:**

Rimini does not dispute that "[a] clone of a software environment is a copy of the software in the environment that was cloned."

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24	As Rimini's witnesses have explained, ███████████████████████ ██████████████████.	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 21:2-24:**
		████████████████████
		• **Pradhan Decl. ¶ 11 & Ex. 9 (Krista Williams Depo.) at 12:11-20, 17:1-16, 73:2-13, 94:23-95:23:**
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	25	████████████████	• *See* Undisputed Fact 20
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23		█████████	████████████████████████████
24		██████████	• Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 82:11-16, 88:19-89:17:
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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15		• **Pradhan Decl. ¶ 31 & Ex. 29**
16		**(RSI06800276):**
17		An internal Rimini IT service request dated April 29, 2010 states:
18		███████████████
19		███████████████
20		███████████████
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D.   Rimini Used Oracle Database For Commercial Purposes

#	Undisputed Fact	Supporting Evidence
26	████████████	• **Pradhan Decl. ¶ 18 & Ex. 16 (Seth Ravin Depo. (Nov. 17-18, 2011))** at 447:22-448:5, 450:25-451:5: ████████████

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8		• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester**
9		**Depo.) at 120:6-8:**
10		██████████████████
11		████
12	27	████████████████ • **Pradhan Decl. ¶ 35 & Ex. 33 (Douglas Zorn**
13		█████████ **Rule 30(b)(6) Depo.) at 195:10-16, 39:25-**
14		**40:4:**
15		████████████████
16		███████
17		████████
18		██
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22		██████████
23		• **Pradhan Decl. ¶ 37 & Ex. 35 (Michael**
24		**Davichick Depo.) at 72:25-73:13; *id.* ¶ 38 &**
		Ex. 36 (Oracle Depo. Ex. 281):
25		████████████████
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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6	28 ████████	• **Pradhan Decl. ¶ 35 & Ex. 33 (Douglas Zorn Rule 30(b)(6) Depo.) at 159:10-12, 159:19-20, 159:23-25, 160:3-5:**
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18		• **Pradhan Decl. ¶ 36 & Ex. 34 (Oracle Depo. Ex. 418) at RSI06339917, -923:**
19		
20		According to Rimini's Consolidated Financial Statements, Rimini's revenues for 2009 and 2010 were ████ and ████, respectively.
21		
22		As explained in the notes to those consolidated financial statements, ████████ "
23		
24	29 ████████	• **Pradhan Decl. ¶18 & Ex. 16 (Seth Ravin Depo. (Nov. 17-18, 2011)) at 243:3-9:**
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1		████████████████████
2		• **Pradhan Decl. ¶ 41 & Ex. 39 (May 16, 2012 Rimini Street Press Release):**
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4		Rimini Street's May 16, 2012 press release entitled "Rimini Street Appoints Ed Schaffer
5		Chief Financial Officer" includes the following quotation attributed to Seth Ravin: "***Rimini***
6		***Street is on track and continues to execute against our global business plan in 2012 and***
7		***prepare for a planned IPO in 2013***, while remaining committed to delivering the most
8		innovative, responsive and value-driven software support services in the industry." (emphasis
9		supplied)
10	30 ██████████████	• **Pradhan Decl. ¶ 18 & Ex. 16 (Seth Ravin Depo. (Nov. 17-18, 2011)) at 448:6-450:3:**
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- **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 108:20-110:10, 143:22-25:**
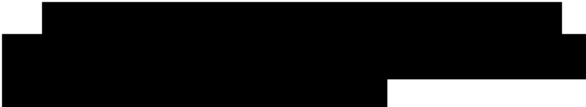
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7	31	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 108:20-109:18, 120:6-11:**
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24		• *See* **Undisputed Fact 35**
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26	32	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 110:6-10:**
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3	33 ████████████████	• **Pradhan Decl. ¶ 14 & Ex. 12 (Beth Lester Rule 30(b)(6) Depo.) at 38:13-39:6:**
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13	34 ████████████████	• **Pradhan Decl. ¶ 14 & Ex. 12 (Beth Lester Rule 30(b)(6) Depo.) at 44:11-23**
14	████████████████	
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17		████████████████████
18		████████████████████
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21		████████████████.
22		• **Pradhan Decl. ¶ 15 & Ex. 13 (ORCLRSRSI00910435_02348) (HCM101131_09TXFRMCN.DAT file from RSI0910435):**
23		
24		
25		The DAT file HCM101131_09TXFRMCN.DAT located in Rimini's Development Archives folder has a REM Database line ██████."
26		
27		The DAT file was produced with the filepath HCM101103\DATA\8.2(████████████)\ HCM101131_09TXFRMCN.DAT.
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

1			• **Pradhan Decl. ¶ 14 & Ex. 12 (Beth Lester Rule 30(b)(6) Depo.) at 106:4-14:**
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7			██████████████████
8			• **Pradhan Decl. ¶ 16 & Ex. 14 (Oracle Depo. Ex. 74):**
9			
10			The document indicates that the three letter character client codes assigned to ████
11			████████████ represent clients ████
12			██████████████████ and Gaming Corporation respectively (rows 30-31,
13			219, and 368).
14	35	████████████████	• **Pradhan Decl. 18 & Ex. 16 (Seth Ravin Depo. (Nov. 17-18, 2011)) at 448:25-450:3:**
15		████████████████	
16			██████████████████
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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4	36	████████████████	• **Pradhan Decl. ¶ 18 & Ex. 16 (Seth Ravin Depo. (Nov. 17-18, 2011)) at 447:22-448:5:**
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8			█████████████
9			████████
10	37	Chris Limburg – ████████	• **Pradhan Decl. ¶ 11 & Ex. 9 (Krista Williams Depo.) at 9:22-10:16, 34:12-16:**
11		███████████	
12		wrote that ████	███████████
13		███████████	████████████
14		███████████	████████████
15		███████████	████████████
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20			████████████
21			██████████
22			• **Pradhan Decl. ¶ 40 & Ex. 38 (RSI04026526):**
23			On March 9, 2010, Chris Limburg, a Sr.
24			PeopleSoft Environments Engineer, wrote the following:
25			████████████
26			████████████
27			████████████
28			████████████

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

1	38	████████████	• **Pradhan Decl. ¶ 17 & Ex. 15 (John Whittenbarger Depo.) at 57:1-9, 57:17-58:3, 59:2-12:**

- **Pradhan Decl. ¶ 43 & Ex. 41 (Brian Slepko 30(b)(6) Depo. (Dec. 16, 2011)) at 61:1-21, 69:14-25:**

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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- **Pradhan Decl. ¶ 42 & Ex. 40 (Brian Slepko**
18 **30(b)(6) Depo. (Aug. 24, 2010)) at 34:17-19,**
57:14-58:10:

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

1			[REDACTED]
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7			• *See* **Undisputed Fact 8.**
8			An environment includes an installed database component.
9			
10	39	[REDACTED]	• **Pradhan Decl. ¶ 44 & Ex. 42 (RSI03611439):**
11			In an April 21, 2010 email, Rimini identified [REDACTED] as a replacement for a [REDACTED]
12			[REDACTED] is described as [REDACTED]
13			
14			
15			"
16			• **Pradhan Decl. ¶ 45 & Ex. 43 (RSI06698785):**
17			[REDACTED]
18			
19			
20			
21			• **Pradhan Decl. ¶ 21 & Ex. 19 (Attachment A to Rimini's First Supp. Response to Interrogatory 17):**
22			
23			Attachment A to Rimini's Response to Interrogatory 17 – which identifies Oracle Database Software currently or formerly present on identified Rimini Computer Systems or identified Rimini Virtual Machines – includes an entry for [REDACTED] (p. 1, row 33). Thus, Rimini admits Oracle Database was installed on [REDACTED]
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

#	Undisputed Fact	Supporting Evidence
		• **Pradhan Decl. ¶ 11 & Ex. 9 (Krista Williams Depo.) at 52:25-53:17:** ██████████████████

E.   Rimini Does Not Use Oracle Database To Develop Its Own Applications

#	Undisputed Fact	Supporting Evidence
40	██████████████	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 114:9-18:** ██████████████████
41	██████████████	• **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 114:20-24:** ██████████████████

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| 42 | [REDACTED] | • **Pradhan Decl. ¶ 18 & Ex. 16 (Seth Ravin Depo. (Nov. 17-18, 2011)) at 367:3-11, 392:12-393:11; *id.* ¶19 & Ex. 17 (Oracle Depo. Ex. 929):** [REDACTED] |

• **Pradhan Decl. ¶ 37 & Ex. 35 (Michael Davichick Depo.) at 175:23-177:2, 177:23-178:20, 191:9-25:** [REDACTED]

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[. . .]

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

#	Undisputed Fact	Supporting Evidence
		████████████████████
43	Rimini has stated: " ████████████████████████████████	• **Pradhan Decl. ¶ 39 & Ex. 37 (Oracle Depo. Ex. 293) at RSI02989352-53:** In a January 7, 2008 email to a customer, Rimini wrote, ████████████████████

F. The OLSA Does Not Authorize Rimini's Copies

#	Undisputed Fact	Supporting Evidence
44	Rimini's support agreements with its customers ████████████████	• *E.g.*, **Pradhan Decl. ¶¶ 46-56 & Exs. 44-54 (Rimini support agreements):** These examples of Rimini's support agreements uniformly provide: • ████████████████████ • ████████████████████

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			████████████████
45	Until late in 2011, Rimini did not provide support for customers on Oracle Database.	• **Pradhan Decl. ¶ 57 & Ex. 55 (10/3/11 Rimini Press Release: "Rimini Street Expands Industry-Leading Support Offering to Cover Oracle Database") at 1:** "Oracle OpenWorld 2011, October 3, 2011 - Rimini Street, Inc. . . . *today announced the expansion of its maintenance and support services to cover Oracle Database products.*" (emphasis supplied)
46	████████████████	• **Pradhan Decl. ¶ 37 & Ex. 35 (Michael Davichick Depo.) at 219:20-220:7:** ████████████████ • **Pradhan Decl. ¶ 54 & Ex. 52 (Support Agreement with Koch Business Solutions, LP):** Section 5(D) of Koch's Rimini Support Agreement reads: ████████████████

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█████████████████████████████

- *E.g.*, Pradhan Decl. ¶¶ 46-53 and 55-56 & Exs. 44-51 and 53-54 (Support Agreements with AGCO Corporation; AS America, Inc.; AmeriGas Propane L.P.; Anadarko Petroleum Corp.; Factory Mutual Insurance Co.; Genesis Health Care; JBS USA LLC; Kichler Lighting; National Grid; and Smurfit Stone):

Rimini's support agreements include some variation of the following language at Section 5(D):

█████████████████████████████

- Pradhan Decl. ¶ 46 & Ex. 44 at RSI06800743-44; *id.* ¶ 47 & Ex. 45 at RSI06800804; *id.* ¶ 48 & Ex. 46 at AMERIGAS-SUB00025-26; *id.* ¶ 49 & Ex. 47 at RSI00004880-81; *id.* ¶ 50 & Ex. 48 at RSI00002949-50; *id.* ¶ 52 & Ex. 50 at RSI00004766-67; *id.* ¶ 55 & Ex. 53 at RSI00004482; *id.* ¶ 56 & Ex. 54 at SMURFIT-SUB000008-09:
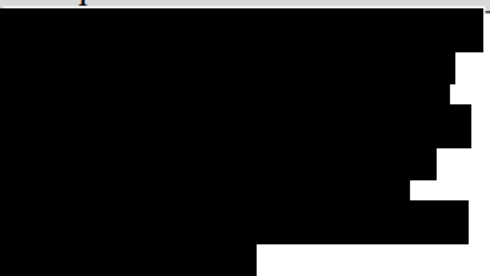
These examples of Rimini's Support Services Agreements define "███████████," as

█████████████████████████████

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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47	██████████████████████████	• *E.g.*, Pradhan Decl. ¶¶ 46-56 & Exs. 44-54 (Rimini support agreements) Rimini's support agreements include some variation of the following language at Article 14 or a corresponding "Independent Contractor Status" article: ███████████████████████████

G.   Rimini Did Not Use Oracle Database Solely For Its Customers' Internal Business Operations

#	Undisputed Fact	Supporting Evidence
48	████████████████████████	• *See* Undisputed Fact 10. ████████████████████████ • *See* Undisputed Fact 19. Rimini admits it has at least 216 environments on its servers that contain installed copies of Oracle Database. As indicated in Exs. 19 and 21, the "Customer(s) Receiving Support" column includes 72 distinct customer names. • **Pradhan Decl. ¶ 29 & Ex. 27 (Ray Grigsby Depo.) at 114:7-115:1; *id.* ¶ 30 & Ex. 28 (Oracle Depo. Ex. 183):** ███████████████████████████

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		g▮ ████████████
49	████████████	• *See* Undisputed Facts 19, 23.
		• Pradhan Decl. ¶ 11 & Ex. 9 (Krista Williams Depo.) at 52:25-53:17:
		████████████
		• Pradhan Decl. ¶ 34 & Ex. 32 (First Supp. Exhibit 1A-3 to Rimini's Third Supp. Responses to Interrogatories 20-22):
		In First Supplemented Exhibit 1A-3, Rimini identifies many environments ████ ████████████ (p. 3, row 9, columns 2 and 3).

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

1 2 3			• **Pradhan Decl. ¶ 20 & Ex. 18 (Rimini's First Supp. Response to Interrogatory 17);** *id.* **¶¶ 21, 23 & Exs. 19, 21 (Attachment A & First Supp. Attachment C to Rimini's First Supp. Response to Interrogatory 17):**
4 5 6 7 8 9			[REDACTED]
10 11 12	50	[REDACTED]	• **Pradhan Decl. ¶ 21 & Ex. 19 (Attachment A to Rimini's First Supp. Response to Interrogatory 17) at 3 (rows 1 & 2):**
13 14			Attachment A to Rimini's Response to Interrogatory 17 identifies Oracle Database Software currently or formerly present on identified Rimini Computer Systems or identified Rimini Virtual Machines.
15 16 17			[REDACTED]
18 19 20	51	[REDACTED]	• *See* **Undisputed Fact 23.** • **Pradhan Decl. ¶ 34 & Ex. 32 (First Supp. Exhibit 1A-3 to Rimini's Third Supp. Responses to Interrogatories 20-22):**
21 22 23			In First Supplemented Exhibit 1A-3, Rimini states the "Build Source" for [REDACTED] is "[REDACTED] (p. 3, row 9, column 3).
24			• **Pradhan Decl. ¶ 21 & Ex. 19 (Attachment A to Rimini's First Supp. Response to Interrogatory 17):**
25 26 27 28			[REDACTED]

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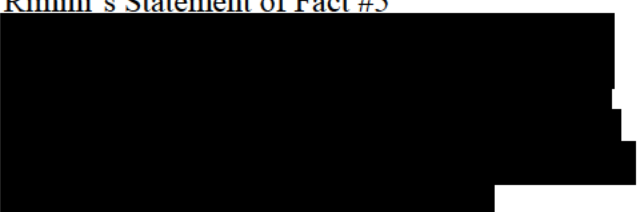|		
52	███████████████	• *See* Undisputed Fact 23. • **Pradhan Decl. ¶ 34 & Ex. 32 (First Supp. Exhibit 1A-3 to Rimini's Third Supp. Responses to Interrogatories 20-22):** In First Supplemented Exhibit 1A-3, Rimini states the "Build Source" for ███████ is "██████ (p. 4, row 32, column 3). • **Pradhan Decl. ¶ 21 & Ex. 19 (Attachment A to Rimini's First Supp. Response to Interrogatory 17):** ███████████████
53	███████████████	• *See* Undisputed Fact 23 • **Pradhan Decl. ¶ 34 & Ex. 32 (First Supp. Exhibit 1A-3 to Rimini's Third Supp. Responses to Interrogatories 20-22):** In First Supplemented Exhibit 1A-3, Rimini states the "Build Source" for ███████ is "██████ (p. 1, row 14, column 3). • **Pradhan Decl. ¶ 21 & Ex. 19 (Attachment A to Rimini's First Supp. Response to Interrogatory 17):** ███████████████
54	███████████████	• *See* Undisputed Fact 23. • **Pradhan Decl. ¶ 34 & Ex. 32 (First Supp. Exhibit 1A-3 to Rimini's Third Supp. Responses to Interrogatories 20-22):** In First Supplemented Exhibit 1A-3, Rimini states the "Build Source" for ███████ is "██████ (p. 2, row 36, column 3). • **Pradhan Decl. ¶ 21 & Ex. 19 (Attachment A to Rimini's First Supp. Response to**

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

1			Interrogatory 17):
2			███████████████
3			███████████████
4			███████████████
5	55	████████████	• *See* **Undisputed Fact 23.**
6			• **Pradhan Decl. ¶ 34 & Ex. 32 (First Supp. Exhibit 1A-3 to Rimini's Third Supp.**
7			**Responses to Interrogatories 20-22):**
8			In First Supplemented Exhibit 1A-3, Rimini
9			states the "Build Source" for █████████ is
10			"████████ (p. 3, row 41, column 3).
11			• **Pradhan Decl. ¶ 21 & Ex. 19 (Attachment A to Rimini's First Supp. Response to**
12			**Interrogatory 17):**
13			███████████████
14			███████████████
15			███████████████
16	56	████████████	• *See* **Undisputed Fact 23.**
17			• **Pradhan Decl. ¶ 34 & Ex. 32 (First Supp.**
18			**Exhibit 1A-3 to Rimini's Third Supp. Responses to Interrogatories 20-22):**
19			In First Supplemented Exhibit 1A-3, Rimini
20			states the "Build Source" for █████████ is
21			"████████ (p. 7, row 34, column 3).
22			• **Pradhan Decl. ¶ 21 & Ex. 19 (Attachment A to Rimini's First Supp. Response to**
23			**Interrogatory 17):**
24			███████████████
25			███████████████
26			███████████████
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II.   **FACTS RELATED TO RIMINI'S AFFIRMATIVE DEFENSES OF STATUTE OF LIMITATIONS AND LACHES**

#	Undisputed Fact	Supporting Evidence
57	Oracle brought this action on January 25, 2010.	• **Pradhan Decl. ¶ 102 & Ex. 95 (Oracle Complaint).**
58	Citing the three-year limitations period set forth at 17 U.S.C. § 507(b), Rimini asserts that all of Oracle's copyright claims are untimely "with respect to acts that occurred prior to January 25, 2007."	• **Pradhan Decl. ¶ 103 & Ex. 96 (Rimini's Answer to Oracle's Second Amended Complaint and First Amended Counterclaim) at 26:** Rimini's Eighth Affirmative Defense "Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations." • **Pradhan Decl. ¶ 58 & Ex. 56 (Rimini's Responses to Oracle's 8th Set of Interrogatories) at 9-10:** Interrogatory 37 "Identify all facts that support your assertion in your Eights Affirmative Defense that 'Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations.'" Rimini's Response to Interrogatory 37 "Oracle's First Claim for Relief is barred under 17 U.S.C. § 507(b) with respect to acts that occurred prior to January 25, 2007."
59	Oracle served Rimini an interrogatory requesting that Rimini "[i]dentify all facts that support" Rimini's statute of limitations defense.	• **Pradhan Decl. ¶ 58 & Ex. 56 (Rimini's Responses to Oracle's 8th Set of Interrogatories) at 9 (Interrogatory 37).** Interrogatory 37 "Identify all facts that support your assertion in your Eights Affirmative Defense that 'Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations.'"
60	Rimini's response to that interrogatory identifies no specific evidence, but instead states generally that "Oracle had or should have had knowledge that Rimini was in business and competing with Oracle, that it was accessing and downloading materials from Oracle's systems on behalf of its clients, that it was receiving delivery of Oracle software, and that it was providing	• **Pradhan Decl. ¶ 58 & Ex. 56 (Rimini's Responses to Oracle's 8th Set of Interrogatories) at 10.**

1 2		software support services, including updates and patches."	
3 4 5 6 7 8 9	61	Rimini launched its business in September 2005, focusing initially on offering support for Siebel products, which it later expanded to include J.D. Edwards and PeopleSoft products.	• **Pradhan Decl. ¶ 103 & Ex. 96 (Rimini's Answer to Oracle's Second Amended Complaint and First Amended Counterclaim) at 6, ¶¶ 21, 23:** "Rimini Street began operations in September 2005, offering a competitive after-market support offering for Siebel software products." "Rimini Street added support offerings for Oracle's PeopleSoft products in April 2006 and Oracle's JD Edwards products in September 2006."
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	62	████████████████████	• **Pradhan Decl. ¶ 59 & Ex. 57 (9/26/05 Gattey Ltr. to Ravin) at RSI03232060-62:** ████████████
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

63	████████████	• **Pradhan Decl. ¶ 60 & Ex. 58 (10/6/05 Byrne Ltr. to King & Gattey) at RSI03232064:**
64	Rimini contends in this litigation that the actions it took to support its customers were authorized by its customers' license agreements with Oracle.	• *See, e.g.,* **Dkt. No. 259 (Rimini's Opposition to Motion for Partial Summary Judgment) at 8; Pradhan Decl. ¶ 103 & Ex. 96 (Rimini's Answer to Oracle's Second Amended Complaint and First Amended Counterclaim) at ¶ 5:**
65	████████████	• **Dkt. No. 269 (Rimini's Statement of Facts in Support of Its Opposition to Oracle's [First] Motion for Partial Summary Judgment and Response to Oracle's Alleged Facts [filed under seal]) at 39, No. 5:** Rimini's Statement of Fact #5

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

| 66 | [REDACTED] | • *See* Undisputed Fact 63.

• **Pradhan Decl. ¶ 61 & Ex. 59 (Seth Ravin Depo. (July 21, 2010)) at 321:17-322:3; 326:1-9; 329:24-330:12:** [REDACTED] |
| 67 | [REDACTED]
e. | • *See, e.g.*, **Pradhan Decl. ¶ 62 & Ex. 60 at ORCLRS1325165:** [REDACTED] |

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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8 • **Pradhan Decl. ¶ 9 & Ex. 7 (George Lester Depo.) at 135:23-136:4:**

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14 • **Dkt. No. 269 (Rimini's Statement of Facts in Support of Rimini's Opposition to Oracle's [First] Motion for Partial**

15 **Summary Judgment and Response to**

16 **Oracle's Alleged Facts [filed under seal]) at 3, No. 10:**

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20 • **Pradhan Decl. ¶ 63 & Ex. 61 (Oracle Depo. Ex. 458):**

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22 On June 27, 2006, Rimini employee John Whittenbarger sent an email to Rimini executive Dennis Chiu, asking

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT
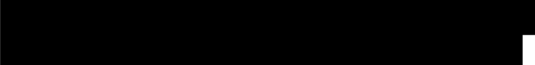
1			████████████████████
2			████████████████████
3			████████████ *bi* ████
4	68	On June 27, 2006, Rimini executive Dennis Chiu told Rimini employee John Whittenbarger ████████	• **Pradhan Decl. ¶ 63 & Ex. 61 (Oracle Depo. Ex. 458):**
5			
6		████████████████	On June 27, 2006, Rimini employee John Whittenbarger sent an email to Rimini executive Dennis Chiu, asking for a ████
7		████████████████	
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16	69	████████████████	• *See, e.g.*, **Pradhan Decl. ¶ 64 & Ex. 62 (Oracle Depo. Ex. 459):**
17		████████████████	A June 28, 2006 email sent from "support@siebel.com" confirming
18		████████████████	████████████████████
19		████████████████	████████████████████
20		████████████████	
21			• **Pradhan Decl. ¶ 17 & Ex. 15 (John Whittenbarger Depo.) at 101:23-103:7:**
22			████████████████████
23			████████████████████
24			████████████████████
25			████████████████████
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12	70 ████████████████	• Dkt. No. 269 (Rimini's Statement of Facts in Support of Rimini's Opposition to Oracle's [First] Motion for Partial Summary Judgment and Response to Oracle's Alleged Facts [filed under seal]) at 3, Nos. 8-9:
13	████████████████	
14	███████████	
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16		████████████████████████
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24	71 ████████████████	• Pradhan Decl. ¶65 & Ex. 63 (Brian Slepko Depo.) at 16:23-17:9:
25	████████████████	████████████████████████
26	████████████████	█████████████████
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

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5			• **Pradhan Decl. ¶ 66 & Ex. 64 (Dennis Chiu Depo.) at 24:12-25:4:**
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12	72	████████████	• **Pradhan Decl. ¶ 67 & Ex. 65 (Rimini Depo. Ex. 41) at ORCLRS0211991, -988, -982:**
13			On November 25, 2008, Oracle employee John Marandola sent an email to customer ████ ████████████ later forwarded to Rimini employee Dennis Chiu, regarding ████████████
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27			On November 25, 2008, Mr. Chiu responded, acknowledging that ████████████
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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT
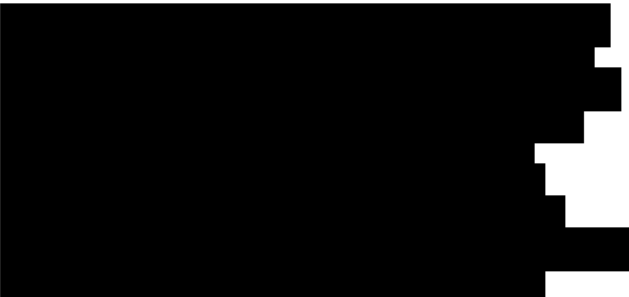
1			███████████
2			• **Pradhan Decl. ¶ 68 & Ex. 66 (Oracle Depo. Ex. 1558) at RSI03969579-82:**
3			
4			On December 23, 2008, ███████████
5			███████████
6	73	Rimini alleged in a pleading filed in this Court that as late as March 2009 and March 29, 2010, when Rimini employees allegedly made defamatory statements, Oracle had "no basis to believe in . . . [the] illegality of Rimini Street's business practices."	• *See* **Undisputed Facts 77, 83, 87** (describing alleged defamatory statement by Oracle employee on March 29, 2010 that Rimini engaged in "massive theft" of Oracle's intellectual property through an "illegal business model" and alleged "insinuation" by unnamed Oracle employee in March 2009 that Rimini's business practices were illegal).
10			• **Pradhan Decl. ¶ 103 & Ex. 96 (Rimini's Answer to Oracle's Second Amended Complaint and First Amended Counterclaim) at 11, ¶ 50:**
13			"Oracle has had no basis to believe in this stated illegality of Rimini Street's business practices."
15	74	Rimini told its customers that ██████ ███████████ ███████████ ███████████	• **Pradhan Decl. ¶ 69 & Ex. 67 (Oracle Depo. Ex. 276) at RSI01043837-38:** In response to a customer email inquiring ███ ███████████ ███████████ Rimini employee Ms. Williams responded, in part: ███████████ ███████████ ███████████ ███████████
23	75	In a pleading filed on June 16, 2011, Rimini asserted that "clients' Oracle Software and Support Materials are not physically co-mingled together" and that a central "'library' of Oracle's intellectual property 'to support its present and prospective customers'" has "never existed at Rimini Street."	• **Pradhan Decl. ¶ 103 & Ex. 96 (Rimini's Answer to Oracle's Second Amended Complaint and First Amended Counterclaim) at ¶¶ 34, 50:** "34. Oracle is further aware that each of Rimini Street's clients has a unique data 'silo' for storing clients' Oracle Software and Support Materials. Therefore, the clients' Oracle Software and Support Materials are not

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

1 2 3 4 5 6 7 8 9 10 11			physically co-mingled together. Despite its awareness of Rimini Street's processes and procedures, Oracle states that Rimini Street has 'stockpile[d] a library' of Oracle's intellectual property 'to support its present and prospective customers.' Such a 'library' has never existed at Rimini Street, and Oracle is aware of that fact and could easily have confirmed it by simply accepting Rimini Street's offer of third party verification." "50. . . . . For instance, Rimini Street does not have or make available a "single repository" of downloaded Oracle Software and Support Materials as Oracle states. Nor does Rimini Street mixed or consolidated Oracle Software and Support Materials such that unique downloads for one client are co-mingled with unique downloads from other clients, and support materials are not indiscriminately downloaded and stored for general use."
12 13 14 15 16 17 18 19 20 21 22 23	76	Only after discovery revealed the falsity of this assertion did Rimini concede that it did co-mingle different customer software together and that it did use such a "library of Oracle's intellectual property" for years at Rimini.	• **Dkt. No. 336 (Rimini's Opposition to Oracle's Motions for Evidentiary Sanctions for Spoliation) at 2, 4-5:** ". . . Rimini will go one step further stipulate that Rimini's internal software folder did indeed include a complete copy of each of Oracle's registered works corresponding to the table included in Oracle's motion. . . . [. . .] While Oracle attempts to paint the alleged 'software library' as a 'jumbled' collection of Oracle material to be 'cross-used' regardless of a clients' scope of entitlement, the reality is that this folder contained copies of PeopleSoft installation media and was organized by software release so Rimini personnel could easily determine which clients were entitled to the stored media."

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STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
ORACLE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

III.   FACTS RELATED TO RIMINI'S COUNTERCLAIMS BASED ON ALLEGED DEFAMATION

A.   Alleged Defamatory Statement 1

#	Undisputed Fact	Supporting Evidence
77	***Alleged Defamatory Statement 1:*** Rimini alleges that, ███ "	• **Pradhan Decl. ¶ 76 & Ex. 68 (Rimini's First Supp. Response to Interrogatory 16) at 4:** Interrogatory 16 "For each false, defamatory, or disparaging statement YOU allege in Count One of YOUR counterclaim, IDENTIFY the statement and the individual who made the statement." ███
78	As to Alleged Defamatory Statement 1, Rimini does not know who made the alleged "insinuation" to Pat Phelan of Gartner Research.	• **Pradhan Decl. ¶ 76 & Ex. 68 (Rimini's First Supp. Response to Interrogatory 16) at 4:** Interrogatory 16 "For each false, defamatory, or disparaging statement YOU allege in Count One of YOUR counterclaim, IDENTIFY the statement and the individual who made the statement." ██ • **Pradhan Decl. ¶ 78 & Ex. 70 (May 2, 2011 Letter from Ryan Dykal to Bree Hann) ("Dykal Ltr.") at 2:** " . . . Oracle asserts that Rimini's response [to Interrogatory 16] regarding the statement made

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1 2 3 4 5 6			by an Oracle representative to Pat Phelan of Gartner Research is deficient because the response does not specifically identify the Oracle representative and does not include the actual statements made. Rimini has provided Oracle with the information it currently has, however, and will supplement its response as additional details are uncovered through the discovery process."
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	79	In discovery, Oracle asked Rimini to identify the actual contents of the alleged defamatory statement to Ms. Phelan and to identify the Oracle employee who allegedly made the statement. Rimini's May 18, 2011 supplemental response to that interrogatory, which Rimini admits contains all "the information it currently has," identifies no speaker or statement.	• **Pradhan Decl. ¶ 76 & Ex. 68 (Rimini's First Supp. Response to Interrogatory 16) at 4:** Interrogatory 16 "For each false, defamatory, or disparaging statement YOU allege in Count One of YOUR counterclaim, IDENTIFY the statement and the individual who made the statement." ████████████████████ ████████████████████ ████████████████████ ████████████████████ ████████████████████ • **Pradhan Decl. ¶ 77 & Ex. 69 (April 19, 2011 Letter from Bree Hann to Robert Reckers) ("Hann Ltr.") at 2:** In an April 19, 2011 letter, Oracle's counsel (Ms. Hann) wrote the following to Rimini's outside counsel (Mr. Reckers): " . . . Rimini Street's identification of the alleged March 2009 statement is insufficient. . . . Th[e] description identifies neither the Oracle representative who allegedly made the statement, nor the actual statement itself. . . . . If Rimini Street does not have this information, then Oracle is entitled to a statement to that effect." • **Pradhan Decl. ¶ 78 & Ex. 70 (Dykal Ltr.) at 2:** In reply to Ms. Hann's April 19, 2011 letter, Rimini's counsel (Mr. Dykal) wrote: ". . . Oracle asserts that Rimini's response

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1 2 3 4 5			regarding the statement made by an Oracle representative to Pat Phelan of Gartner Research is deficient because the response does not specifically identify the Oracle representative and does not include the actual statements made. Rimini has provided Oracle with the information it currently has, however, and will supplement its response as additional details are uncovered through the discovery process."
6 7	80	Rimini sought no documents, deposition testimony or any other discovery from Ms. Phelan or Gartner Research.	• **Pradhan Decl. ¶¶ 70-71.**
8 9 10 11 12 13	81	Rimini neither asked any Oracle witness at deposition nor served Oracle with any written discovery about Alleged Defamatory Statement 1, including as to (a) any specific statement to Ms. Phelan about Rimini or (b) the identity or state of mind of the Oracle employee who made the alleged "insinuation" about Rimini to Ms. Phelan.	• **Pradhan Decl. ¶ 72.**
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	82	Rimini contends that it "inquired into analyst conversations and . . . derogatory comments regarding Rimini" at the deposition of Oracle employee Juan Jones, citing Mr. Jones' deposition transcript at 64:1-65:6, 72:12-76:1, 83:12-85:19, 106:5-19. The testimony Rimini cites does not relate to the speaker or contents of Alleged Defamatory Statement 1 or any communication between any Oracle employee and any analyst regarding Rimini.	• **Pradhan Decl. ¶ 80 Ex. 72 (March 12, 2012 Letter from Robert Reckers to Kristen Palumbo):** In a March 12, 2012 letter, Rimini's counsel (Robert Reckers) wrote the following to Oracle's counsel (Kristen Palumbo): "[Y]our allegation that Rimini did not prosecute its counterclaims in the course of discovery is demonstratedly [*sic*] false. . . . . Rimini explored topics regarding Oracle's communications with current and potential customers (and others) during the depositions of Oracle's sales personnel. For example, during the deposition of Juan Jones, Rimini inquired into analyst conversations and Jones' derogatory comments regarding Rimini. *See* Jones Dep. at 64:1-65:6, 72:12-76:1, 83:12-85:19, 106:5-19." • **Pradhan Decl. ¶ 81 Ex. 73 (Juan Jones Deposition) at 64:1-65:6, 72:12-76:1, 83:12-85:19, 106:5-19:** The testimony from Mr. Jones' deposition that Mr. Reckers cited in his March 12, 2012 letter is as follows:

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[. . .]

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[. . .]

B.   Alleged Defamatory Statement 2

#	Undisputed Fact	Supporting Evidence
83	***Alleged Defamatory Statement 2:***	• **Pradhan Decl. ¶ 76 & Ex. 68 (Rimini's First Supp. Response to Interrogatory 16) at 4:** Interrogatory 16 "For each false, defamatory, or disparaging statement YOU allege in Count One of YOUR counterclaim, IDENTIFY the statement and the individual who made the statement."

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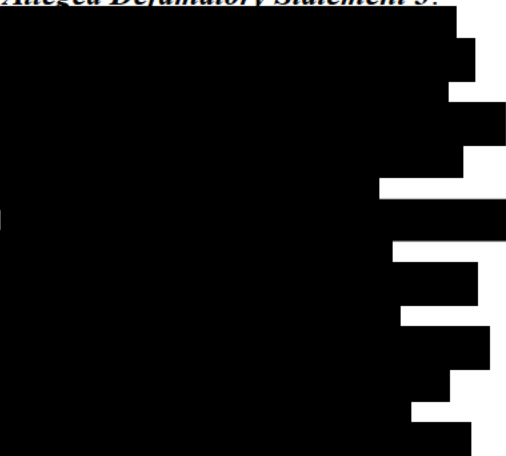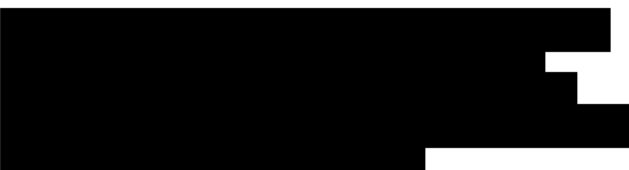|		
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3		• **Declaration Of Deborah Hellinger In Support Of Oracle's Second Motion For Partial Summary Judgment, ¶¶ 3-4, 6:**
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5		Ms. Hellinger received emails from Chris Kanaracus of IDG News Service and John Letzing of Marketwatch on March 29, 2010 asking for a comment from Oracle regarding Rimini Street's answer and counterclaims. Ms. Hellinger replied to both individuals via email with the same statement: "Oracle is committed to customer choice and vigorous competition, but draws the line with any company, big or small, that steals its intellectual property. The massive theft that Rimini and Mr. Ravin engaged in is not healthy competition. We will prove this in court."
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12		• **Pradhan Decl. ¶ 83 & Ex. 76 (John Letzing, "Upstart fires back at Oracle in legal battle," Marketwatch, March 29, 2010):**
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14		The March 29, 2010 article by John Letzing states, in relevant part:
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16		"Separately on Monday, Rimini Street said it also has filed a response to a suit lodged against it by Oracle in January. 'Oracle and its predecessors began a systematic campaign to disrupt and halt Rimini Street's business since the inception of the company in 2005,' the Las-Vegas-based company said in a statement. 'As Rimini Street's success grew, so did Oracle's apparent determination and efforts to disrupt Rimini Street's growth.'
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21		Oracle had alleged in its lawsuit that Rimini Street's business depends on illegally downloading Oracle's software support materials, 'in a scheme that is vast in scope.'
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24		A spokeswoman for Oracle, Deborah Hellinger, said in a statement Monday that Oracle is 'committed to customer choice and vigorous competition, but draws the line with any company, big or small, that steals its intellectual property.'
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27		In reference to Rimini Street Chief Executive Seth Ravin, Hellinger added: 'The massive theft
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			that Rimini and Mr. Ravin engaged in is not healthy competition.'"
			• **Pradhan Decl. ¶ 84 & Ex. 77 (Chris Kanaracus, "Rimini Street files countersuit against Oracle," Computerworld, March 29, 2010):**
			The March 29, 2010 article by Chris Kanaracus states, in relevant part:
			"Oracle 'is committed to customer choice and vigorous competition, but draws the line with any company, big or small, that steals its intellectual property,' company spokeswoman Deborah Hellinger said via e-mail. 'The massive theft that Rimini and Mr. Ravin engaged in is not healthy competition. We will prove this in court.'"
	84	Ms. Hellinger believed her statement that Rimini had engaged in "massive theft" of Oracle's intellectual property to be true and had no doubt as to its truthfulness.	• **Hellinger Decl. ¶¶ 5, 7.**
	85	Rimini neither deposed Ms. Hellinger nor designated her as an Oracle custodian whose documents should be produced in this case.	• **Pradhan Decl. ¶ 71.**
	86	Rimini did not propound any written discovery, or ask any witness at deposition, about Ms. Hellinger's statements to the press.	• **Pradhan Decl. ¶ 73.**

C.   Alleged Defamatory Statement 3

#	Undisputed Fact	Supporting Evidence
87	***Alleged Defamatory Statement 3:*** ███████████████████████	• **Pradhan Decl. ¶ 76 & Ex. 68 (Rimini's First Supp. Response to Interrogatory 16) at 4 (citing LC-SUB00087-88):** Interrogatory 16 "For each false, defamatory, or disparaging statement YOU allege in Count One of YOUR counterclaim, IDENTIFY the statement and the individual who made the statement." ████████████████████

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4			• **Pradhan Decl. ¶ 82 & Ex. 75 (LC-SUB00087-88); McLeod Decl. ¶ 3 & Ex. 74:**
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6			James McLeod's January 30, 2010 email to Kerry Fogarty of Liz Claiborne (LC-SUB00087-88 and McLeod Decl., Ex. 74) states: "Hi Kerry, I hope you are well. Forwarding as an FYI here given our recent discussions. Regards. James.'"
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9			The only substantive text that follows is the text of a January 26, 2010 *Information Week* article by Paul McDougall entitled "Oracle Sues Rimini Street For 'Massive Theft.'" The *Information Week* article that Mr. McLeod forwarded contains the following statement: "'This case is about massive theft of Oracle's software and related support materials through an illegal business model,' Oracle said in court papers filed Monday in federal court in Nevada."
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15	88	With respect to Alleged Defamatory Statement 3, Rimini bases its defamation claim solely on the quote from Oracle's complaint that appears in the *Information Week* article that Mr. McLeod forwarded to Ms. Fogarty.	• **Pradhan Decl. ¶ 76 & Ex. 68 (Rimini's First Supp. Response to Interrogatory 16) at 4:**
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17			Interrogatory 16 "For each false, defamatory, or disparaging statement YOU allege in Count One of YOUR counterclaim, IDENTIFY the statement and the individual who made the statement."
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25			• **Pradhan Decl. ¶ 82 & Ex. 75 (LC-SUB00087-88); McLeod Decl. ¶ 3 & Ex. 74:**
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27			James McLeod's January 30, 2010 email to Kerry Fogarty of Liz Claiborne (LC-SUB00087-88 and McLeod Decl., Ex. 74) states: "Hi Kerry,
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	#	Undisputed Fact	Supporting Evidence
			I hope you are well. Forwarding as an FYI here given our recent discussions. Regards. James." The only substantive text that follows is the text of a January 26, 2010 *Information Week* article by Paul McDougall entitled "Oracle Sues Rimini Street For 'Massive Theft.'" The *Information Week* article that Mr. McLeod forwarded contains the following statement: "'This case is about massive theft of Oracle's software and related support materials through an illegal business model,' Oracle said in court papers filed Monday in federal court in Nevada."
	89	Oracle said in its Complaint filed in this Court on January 25, 2010 that "[t]his case is about massive theft of Oracle's software and related support materials through an illegal business model . . . ."	• **Pradhan Decl. ¶ 102 & Ex. 95 (Oracle Complaint) at ¶ 5.**
	90	Mr. McLeod believed the *Information Week* article he forwarded to Ms. Fogarty truthfully reported the contents of Oracle's complaint in this case and he had no doubts that it did so.	• **McLeod Decl. ¶¶ 3-5 & Ex. 74.**
	91	Rimini did not depose Mr. McLeod or Ms. Fogarty in this case.	• **Pradhan Decl. ¶ 71.**
	92	Rimini did not propound any written discovery, or ask any witness at deposition, about Mr. McLeod's email to Ms. Fogarty.	• **Pradhan Decl. ¶ 74.**

D.   Rimini Is A Limited Purpose Public Figure

#	Undisputed Fact	Supporting Evidence
93	Rimini frequently makes public comments – including statements to the press – about the legality of third-party support and its own conduct.	*See* **Undisputed Facts 94-101.**
94	A March 5, 2005 Wall Street Journal article by David Bank entitled "Oracle Will Face New Competitor For Siebel Users" attributes a statement to Seth Ravin about the legality of software modification and third-party support under the terms of Siebel license.	• **Pradhan Decl. ¶ 85 & Ex. 78 (David Bank, "Oracle Will Fact New Competitor For Siebel Users," Wall Street Journal, Mar. 5, 2005)** Relevant excerpts are highlighted in Exhibit 78.
95	In May 2006, Seth Ravin corresponded at length with Vauhini Vara from the Wall Street Journal about the nature of third-party support, differences	• **Pradhan Decl. ¶ 86 & Ex. 79 (Oracle Depo Ex. 913):** Relevant excerpts are highlighted in Exhibit 79.

1 2		between Rimini Street's and TomorrowNow's business model, and the legal basis for Rimini Street's business model.	
3 4 5 6	96	A March 23, 2007 CRN.com article by Stacy Cowley entitled "Solution Providers: Oracle Suing Over Standard Industry Practice" includes quotations from Seth Ravin about the *Oracle v. SAP* lawsuit and the legality of the third-party support industry.	• **Pradhan Decl. ¶ 87 & Ex. 80 (Stacy Cowley, "Solution Providers: Oracle Suing Over Standard Industry Practice," CRN.com, Mar. 23, 2007):** Relevant excerpts are highlighted in Exhibit 80.
7 8 9	97	A March 27, 2007 Enterprise System Spectator article by Frank Scavo entitled "Oracle/SAP lawsuit: view from Rimini Street" details an interview that Mr. Scavo had with Seth Ravin about the *Oracle v. SAP* lawsuit and its impact on Rimini's business.	• **Pradhan Decl. ¶ 88 & Ex. 81 (Frank Scavo, "Oracle/SAP lawsuit: view from Rimini Street," The Enterprise System Spectator, Mar. 27, 2007):** Relevant excerpts are highlighted in Exhibit 81
10 11 12 13 14 15	98	A July 12, 2007 eWeek article by Renee Boucher Ferguson entitled "Oracles Suit Against SAP Raises Customer Concerns" includes quotations from Rimini's Vice President of Global Marketing and Alliances, David Rowe, about how the *Oracle v. SAP* lawsuit impacted Rimini's interactions with its customers and led Rimini to modify its own business processes.	• **Pradhan Decl. ¶ 89 & Ex. 82 (Renee Boucher Ferguson, "Oracles Suit Against SAP Raises Customer Concerns," eWeek, July 12, 2007):** Relevant excerpts are highlighted in Exhibit 82.
16 17 18 19	99	An April 25, 2008 CIO article by Thomas Wailgum entitled "Oracle v. SAP Legal Fight Gets Messier, Raises Tough Questions About Third-Party Maintenance" includes quotations from Rimini's Vice President of Global Marketing, David Rowe, about how Rimini Street's business model differs from TomorrowNow's.	• **Pradhan Decl. ¶ 90 & Ex. 83 (Thomas Wailgum, "Oracle v. SAP Legal Fight Gets Messier, Raises Tough Questions About Third-Party Maintenance," CIO, Apr. 25, 2008):** Relevant excerpts are highlighted in Exhibit 83.
20 21 22	100	A March 29, 2010 Rimini Press Release entitled "Rimini Street Sues Oracle" directly states and details why Rimini's business model is "entirely legal."	• **Pradhan Decl. ¶ 91 & Ex. 84 (Mar. 29, 2010 Rimini Street Press Release):** Relevant excerpts are highlighted in Exhibit 84.
23 24 25 26 27	101	During a January 11, 2011 interview with Margaret Brennan of Bloomberg News, Seth Ravin spoke at length about the legality of Rimini's support model and the differences between Rimini's business practices and those of TomorrowNow, which admitted to illegally downloading and copying Oracle's software.	• **Pradhan Decl. ¶ 92 & Ex. 85 (Jan. 11, 2011 Bloomberg Interview with Seth Ravin):** Relevant excerpts are highlighted in Exhibit 85.
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| | 102 | Rimini is a substantial third-party support provider, has a large number of customers, high revenue, analyst coverage, and strong growth. | • **Pradhan Decl. ¶ 93 & Ex. 86 (April 24, 2006 Rimini Street Press Release):**

In an April 24, 2006 press release, Rimini announced " ██████████

• **Pradhan Decl. ¶ 94 & Ex. 87 (RSI00024720) at -723:**

A January 2007 Rimini Company & Opportunity Overview highlights ██████████

• **Pradhan Decl. ¶ 95 & Ex. 88 (Oracle Depo. Ex. 905) at RSI03194829-30:**

In a February 2, 2007 email to a prospective investor, Seth Ravin detailed Rimini's financial goals and metrics, which included a " ██████████

• **Pradhan Decl. ¶ 96 & Ex. 89 (Oracle Depo Ex. 432) at ASP 000354:**

A November 2008 Private Placement Memorandum from JMP Securities for prospective investors included representations that ██████████ |

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- **Pradhan Decl. ¶ 97 & Ex. 90 (CA Cheuvreux, Credit Agricole Group, "SAP Company Report," July 15, 2010) at ORCLRSX-DEAN-00203:**

A July 15, 2010 analyst report by CA Cheuvreux states that "very few third-party providers have so far made meaningful inroads into the recurring Support business, despite offering rates discounted by some 50%. US-based privately-held Rimini Street [. . .] is probably the most prominent."

- **Pradhan Decl. ¶ ; 4 & Ex. : 7 (ORCLRS1339488) at 488-490:**

In a January 11, 2011 interview with Margaret Brennan of Bloomberg News, Seth Ravin reported that Rimini had "44 percent [annual] growth," "over 400 customers around the world," and "a huge sequential growth between 87 percent in bookings growth in Q3 and Q4 alone," with a "huge amount of demand for [Rimini's] services" and "pipelines . . . growing at rapid rates."

- **Pradhan Decl. ¶ 98 & Ex. 91 (PiperJaffray Investment Research, "Third Party Support: Not the End of Software Maintenance, But a Profound Change," July 2011) at ORCLRSX-DEAN-00232:**

A July 2011 analyst report by PiperJaffray about the third-party support industry identifies Rimini as "the leading independent third-party support provider based upon size and brand recognition."

- **Pradhan Decl. ¶ 99 & Ex. 92 (January 11, 2012 Rimini Street Press Release):**

In a January 11, 2012 press release, Rimini described itself as "the leading third-party maintenance and support provider for enterprise software, including Oracle Corporation's [. . .] Siebel, PeopleSoft, [and] JD Edwards [. . .] software." Rimini reported "the highest quarterly sales bookings in the Company's history and a 42-percent increase in sequential quarterly bookings compared to the third quarter of 2011. Rimini Street's full fiscal year 2011 results include record highs in revenue, deferred revenue, sales bookings, sales bookings backlog and average sales price, which are a direct result of the value delivered to its clients and its

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		position as the market leader in the third-party support industry."

position as the market leader in the third-party support industry."

- **Pradhan Decl. ¶ 100 & Ex. 93 (Rimini Street Website Client Overview [accessed September 12, 2012]):**

According to Rimini's website, last accessed on September 12, 2012, Rimini has at least 500 clients, many of which they identify by name.

- **Pradhan Decl. ¶ 100 & Ex. 96 (Rimini's Answer to Oracle's Second Amended Complaint and First Amended Counterclaim) ¶¶ 10, 15:**

"10. Rimini Street is Oracle's fastest-growing competitor for the after-market support business of Oracle's Siebel, PeopleSoft and JD Edwards enterprise software products. Hundreds of Fortune 500, mid market, small and public sector organizations around the world have already made the switch to Rimini Street's innovative, award-winning and highly-praised support model. Rimini Street has been forecasting significant continued year-over-year growth based on sales pipeline data."

"15. In addition to significant savings, Rimini Street's different support model provides clients with 'concierge' level, ultra-responsive service. Unlike Oracle's generic call center approach, Rimini Street assigns each client a named, highly experienced Primary Support Engineer. Support services are available 24x7x365 with guaranteed 30 minute response time anywhere in the world and 90% guaranteed live call answering during the day. *Rimini Street's track-record of meeting these service level commitments and providing excellent service is well documented by leading industry analysts who work with Rimini Street clients, media interviews with Rimini Street clients, client side-by-side live service comparisons, client satisfaction surveys, and hundreds of client reference calls made by Rimini Street prospects.*" (emphasis supplied)

E.   Rimini Cannot Prove Special Damages

#	Undisputed Fact	Supporting Evidence
103	The only specific customer Rimini has identified as a recipient of any alleged	• **Pradhan Decl. ¶ 76 & Ex. 68 (Rimini's First Supp. Response to Interrogatory 16).**

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	defamatory statements is Liz Claiborne (recipient of Alleged Defamatory Statement 3).	***See also*** **Undisputed Facts 77, 83, 87.**
104	████████████████	• **Pradhan Decl. ¶ 101 & Ex. 94 (Rimini's Response to Oracle's Interrogatory 27):** Interrogatory 27 asks Rimini to "Identify each of Your former and current customers including the customer's product line, start date, end date (if applicable) and active-inactive status for which you provide support or other services or products in connection with any of the Software and Support Materials and the name the customer used when executing any contract in connection with any of the Software and Support Materials." Rimini's Response to Interrogatory 27 "identifies Exhibit A, which identifies each former and current Rimini customer along with that customer's supported product line, start date, end date (if applicable), active-inactive status, and alternative names used (if applicable)." ████████████████
105	████████████████	• **Pradhan Decl. ¶ 18 & Ex. 16 (Seth Ravin Depo. (Nov. 17-18, 2011)) at 12:19-13:3, 28:6-30:12:** ████████████████

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1   **F.   Rimini's Unfair Competition Claim Rests On Its Defamation Allegations**

#	Undisputed Fact	Supporting Evidence
107	Rimini's claim for violation of California's Unfair Competition Law rests entirely on its defamation allegations.	• **Pradhan Decl. ¶ 103 & Ex. 96 (Rimini's Answer to Oracle's Second Amended Complaint and First Amended Counterclaim) ¶¶ 60-61:** Rimini's First Amended Counterclaim "60. As evidence of Oracle's *fraudulent business practices*, on information and belief, *Oracle caused false and disparaging allegations to be published and republished by Oracle and its agents* to members of the media and analyst community, Rimini Street's customers and potential customers, as well as to the public at large. . . . 61. *Oracle has also employed unlawful and/or fraudulent business practices in its dealings with industry analysts, reporters and Rimini Street's customers and potential customers.* For example, Oracle has provided *false and misleading information about Rimini Street to customers with which Rimini Street had established a potential business relationship.*" (emphasis supplied)

17   DATED: September 14, 2012   BINGHAM MCCUTCHEN LLP

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20   By:_____/s/ Geoffrey M. Howard_____
                                                    Geoffrey M. Howard
21   Attorneys for Plaintiffs Oracle USA, Inc., Oracle
                                            America, Inc. and Oracle International Corp.

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